

**Submission to Interim Voice Report**

**Submission number 1109**

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25 March 2021

National Indigenous Australians Agency  
Voice Secretariat  
By email: [Co-designVoice@niaa.gov.au](mailto:Co-designVoice@niaa.gov.au)

Dear Professors Langton and Calma,


**Submission to the Interim Voice Report**

Thank you for the opportunity to provide a submission in response to the Interim Report to the Australian Government: Indigenous Voice Co-Design Process.

I make this submission as a proud member of the Yuin Nation, now living and engaged in the Yugambeh community. My mother, Jackie Bedford, has devoted her working life to assisting the Stolen Generations, through working for Link Up NSW and her local community, and serving on the Board of the Tharawal Local Aboriginal Land Council.

My professional career has been diverse. I have worked for the government in various capacities and different departments. My belief in the intrinsic value of good government underpins this submission. Given my commitment to the transformative impact of educational opportunities, I am currently a legal academic in the Faculty of Law at Bond University. More specifically, I am a public law academic. In that capacity, I contributed to Submission #38 made by a collection of Public Lawyers on 22 January 2021.

This submission takes a different focus. It draws on my expertise in Administrative Law. This is the area of law concerned with government decision-making. Therefore, it is directly relevant to the Voice Co-Design process.



Administrative Law is based on enduring values that collectively aim to ensure improved government decision-making and elicit accountability over government decisions.

The most important administrative law value for the Voice Co-design process is consistency and predictability in government decision-making. Only a Constitutionally enshrined Voice to Parliament can provide the high level of consistency and predictability needed. The example of the establishment and then dis-establishment of the Aboriginal and Torres Strait Islander Commission (ATSIC) is a prime example of a design that lacked consistency and predictability. Constitutional reform would secure the Voice and provide consistency and predictability.

A second administrative law value is transparency in government decision-making. This ensures that those affected by government decisions can know how the decision-making process was conducted. For transparency to be effective, stable processes must be devised and made to endure. Only a Constitutionally enshrined Voice to Parliament will promote lasting transparency. The potentially impermanent nature of a legislated Voice would not have the same legacy of sustained transparency.

A third administrative law value is the development of a culture of justification in government decision-making. A culture of justification refers to the reliance on evidence by experts or those affected, and the recording of all material information relied upon to reach decisions. Creating a deep-set culture of justification requires the adoption of the strongest possible design, which is a Constitutionally enshrined Voice to Parliament.

A fourth administrative law value is effective, direct representation and inclusion of those affected in the decision-making processes. Direct representation means that those with a stake in the decision-making should have the most operational and straightforward method to exercise their participation. A Constitutionally enshrined Voice to Parliament would secure the ability to give input directly to both Houses of Parliament (rather than an alternative filtered through the bureaucracy).

A final administrative law value is certainty. This is related to consistency and predictability. Certainty allows those affected by decisions to hold the conviction that established processes will always be followed which in turn builds trust and reciprocity. Aboriginal and Torres Strait Islander Peoples must be able to have confidence that the Voice design will be adhered to and followed in all future decision-making concerning them. That assurance can only be permanently delivered through an embedded Constitutional Voice.

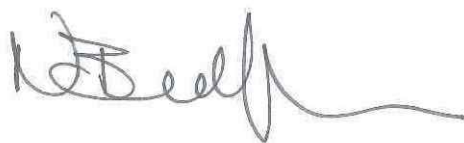
Therefore, using Administrative law values as a foundation to improve government decision-making I submit that a Voice to Parliament is needed and preferred, rather than a legislated voice to government, which can be easily subject to repeal. The Uluru Statement reflects the agency of Aboriginal and Torres Strait Islander Peoples, so it shouldn't be cherry-picked or compromised.

I would like to make a final comment, drawing on comparative law, which compares approaches to law and legal institutions in different countries. I point to the experience of one of our Pacific neighbours, Vanuatu. In Vanuatu's written Constitution, they have preserved the traditional separation of powers (between the Executive, Parliament, and the Judiciary) and enshrined a prominent place in their Constitutional structure for their "National Council of Chiefs". I refer specifically to sections 29-32 of the *Vanuatu Constitution* (consolidated edition 2006):

[http://www.paclii.org/vu/legis/consol\\_act/cotrov406/](http://www.paclii.org/vu/legis/consol_act/cotrov406/).

Thank you again for this opportunity to have input.

Yours sincerely

A handwritten signature in grey ink, appearing to read 'N. Bedford', with a long horizontal flourish extending to the right.

Narelle Bedford

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